

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 618

**Introduced by Senator Leno
(Principal coauthor: Senator Steinberg)**

February 22, 2013

An act to amend Sections 4900, 4901, 4902, ~~and 4903~~ 4903, and 4904 of, and to add Sections 851.865, 1485.5, and 1485.55 to, the Penal Code, relating to wrongful convictions.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Leno. Wrongful convictions.

Existing law provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for specified reasons, and having served the term or any part thereof for which he or she was imprisoned, may present a claim against the state to the California Victim Compensation and Government Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment, as specified.

This bill would extend those provisions to a person who was incarcerated in county jail for a felony conviction. The bill would provide that *in a contested proceeding*, if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, or when the court vacates a judgment ~~for a person~~ on the basis of ~~newly discovered evidence~~ *new evidence, as defined*, concerning a person who is no longer unlawfully imprisoned or restrained, and if

the court finds that the *new* evidence on the petition points unerringly to innocence, the court's finding would be binding on the California Victim Compensation and Government Claims Board *for a claim presented to the board*. The bill would provide that, upon application by the petitioner, the California Victim Compensation and Government Claims Board would, without a hearing, be required to recommend to the Legislature that an appropriation be made, and the claim be paid, as specified.

~~The bill would also provide that when the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, or when the court vacates a judgment in a criminal matter against a person, the California Victim Compensation and Government Claims Board, in making its determination as to any claim submitted by that person, would be required to incorporate and be consistent with the factual findings, including credibility determinations, of the court granting the writ or reversing the conviction, and that those factual findings, including credibility determinations, would be binding upon the board.~~

The bill would require, in a hearing before the board, that the factual findings and credibility determinations establishing the court's basis for granting the writ of habeas corpus, a motion for new trial, or an application for a certificate of factual innocence be binding on the Attorney General, the factfinder, and the board.

The bill would also provide that if the district attorney or Attorney General stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on the Attorney General, the factfinder, and the board. The bill would also require the district attorney to provide notice to the Attorney General prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate a judgment. The bill would also provide that the express factual findings, as defined, made by the court, as specified, shall be binding on the Attorney General, the factfinder, and board.

Existing law requires a claim for wrongful imprisonment be presented by the claimant to the California Victim Compensation and Government Claims Board within a period of 2 years after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment in order to be considered by the board.

This bill would revise those provisions to extend the time period to be 2 years from release from custody. The bill would define release from custody for those purposes as release from imprisonment from state prison or from incarceration in county jail, where there is no subsequent parole jurisdiction or postrelease jurisdiction exercised by the Department of Corrections and Rehabilitation or community corrections program, respectively, or where there is a parole period or postrelease period subject to jurisdiction of a community corrections program, when that period ends.

Existing law requires the California Victim Compensation and Government Claims Board to, upon presentation of a claim, fix a time and place for the hearing of the claim, and to mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing.

This bill would *instead* require the ~~board to order the~~ Attorney General to respond to the claim within 60 days of the date of the order, or to request an extension of time, upon a showing of good cause, ~~to file a response, except in those cases involving a finding of factual innocence, as specified, or a finding by the court that facts point unerringly to innocence, as specified.~~ *The bill would require the board to fix a time and place for the hearing of the claim, to mail notice to the claimant at least 15 days prior to the time fixed for the hearing, and, if the period for response lapses without a request for extension or a response from the Attorney General, to make a recommendation based on the claimant's verified claim and any evidence presented by him or her. The bill would also require the board in those cases board, in cases involving a finding of factual innocence, as specified, or a finding by the court that the facts point unerringly to innocence, to calculate the compensation for the claimant within 30 days of presentation of the claim, as specified, and recommend to the Legislature the payment of that sum, as specified.*

Existing law provides that at the hearing set by the board, the claimant is required to prove, among other things, the fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged. Existing law also provides that when determining whether the claimant intentionally contributed to the bringing about of his or her arrest or conviction, the factfinder shall not consider statements obtained from an involuntary false confession or involuntary plea, and that the claimant bears the burden of proving by a

preponderance of the evidence that the statements were obtained from an involuntary false confession or involuntary plea.

This bill would delete those provisions. The bill would require the board to deny a claim if the board finds by a preponderance of the evidence that a claimant ~~willfully plead~~ *pled guilty with the specific intent to protect the another from prosecution of another* for the underlying conviction for which the claimant is seeking compensation.

Existing law provides that if the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged, and that the claimant has sustained pecuniary injury through his or her erroneous conviction and imprisonment, the California Victim Compensation and Government Claims Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury.

This bill would remove the requirement on the claimant to prove that he or she did not, by any act or omission, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 851.865 is added to the Penal Code, to
- 2 read:
- 3 851.865. (a) If a person has secured a declaration of factual
- 4 innocence from the court pursuant to Section 851.8 or 851.86, the
- 5 finding shall be sufficient grounds for payment of compensation
- 6 for a claim made pursuant to Section 4900. Upon application by
- 7 the person, the California Victim Compensation and Government
- 8 Claims Board shall, without a hearing, recommend to the
- 9 Legislature that an appropriation be made and the claim paid
- 10 pursuant to Section 4904.
- 11 (b) If the declaration of factual innocence is granted pursuant
- 12 to a stipulation of the prosecutor, the duty of the board to, without

1 a hearing, recommend to the Legislature payment of the claim,
2 shall apply.

3 SEC. 2. Section 1485.5 is added to the Penal Code, to read:

4 1485.5. (a) If the district attorney or Attorney General
5 stipulates to or does not contest the factual allegations underlying
6 one or more of the grounds for granting a writ of habeas corpus
7 or a motion to vacate a judgment, ~~those~~ *the facts underlying the*
8 *basis for the court's ruling or order* shall be binding on the
9 Attorney General, the factfinder, and the California Victim
10 Compensation and Government Claims Board.

11 (b) *The district attorney shall provide notice to the Attorney*
12 *General prior to entering into a stipulation of facts that will be*
13 *the basis for the granting of a writ of habeas corpus or a motion*
14 *to vacate a judgment.*

15 ~~(b) Factual~~

16 (c) *The express factual* findings made by the court, including
17 credibility determinations, in considering a petition for habeas
18 corpus, a motion ~~for new trial~~ *to vacate judgment* pursuant to
19 Section 1473.6, or an application for a certificate of factual
20 innocence, shall be binding on the Attorney General, the factfinder,
21 and the California Victim Compensation and Government Claims
22 Board.

23 (d) *For the purposes of this section, "express factual findings"*
24 *are findings established as the basis for the court's ruling or order.*

25 SEC. 3. Section 1485.55 is added to the Penal Code, to read:

26 1485.55. (a) ~~If~~ *In a contested proceeding, if* the court grants
27 a writ of habeas corpus concerning a person who is unlawfully
28 imprisoned or restrained, or when, pursuant to Section 1473.6, the
29 court vacates a judgment ~~for a person~~ on the basis of ~~newly~~
30 ~~discovered~~ *new* evidence concerning a person who is no longer
31 unlawfully imprisoned or restrained, and if the court finds that ~~the~~
32 *new* evidence on the petition points unerringly to innocence, that
33 finding shall be binding on the California Victim Compensation
34 and Government Claims Board for a claim presented to the board,
35 and upon application by the person, the board shall, without a
36 hearing, recommend to the Legislature that an appropriation be
37 made and the claim paid pursuant to Section 4904.

38 (b) If the court grants a writ of habeas corpus concerning a
39 person who is unlawfully imprisoned or restrained on any ground
40 other than new evidence that points unerringly to innocence or

1 actual innocence, the petitioner may move for a finding of
2 innocence by a preponderance of the evidence *that the crime with*
3 *which he or she was charged was either not committed at all or,*
4 *if committed, was not committed by him or her.*

5 (c) If the court vacates a judgment pursuant to Section 1473.6,
6 on any ground other than new evidence that points unerringly to
7 innocence or actual innocence, the petitioner may move for a
8 finding of innocence by a preponderance of the evidence *that the*
9 *crime with which he or she was charged was either not committed*
10 *at all or, if committed, was not committed by him or her.*

11 (d) If the court makes a finding that the petitioner has proven
12 his or her innocence by a preponderance of the evidence pursuant
13 to subdivision (b) or (c), the board shall, without a hearing,
14 recommend to the Legislature that an appropriation be made and
15 the claim paid pursuant to Section 4904.

16 (e) No presumption shall exist in any other proceeding for failure
17 to make a motion or obtain a favorable ruling pursuant to
18 subdivision (b) or (c).

19 (f) If a federal court, after granting a writ of habeas corpus,
20 pursuant to a nonstatutory motion or request, finds a petitioner
21 innocent by no less than a preponderance of the evidence *that the*
22 *crime with which he or she was charged was either not committed*
23 *at all or, if committed, was not committed by him or her,* the board
24 shall, without a hearing, recommend to the Legislature that an
25 appropriation be made and the claim paid pursuant to Section 4904.

26 (g) *For the purposes of this section, “new evidence” means*
27 *evidence that was not available or known at the time of trial that*
28 *completely undermines the prosecution case and points unerringly*
29 *to innocence.*

30 SEC. 4. Section 4900 of the Penal Code is amended to read:

31 4900. Any person who, having been convicted of any crime
32 against the state amounting to a felony and imprisoned in the state
33 prison or incarcerated in county jail pursuant to subdivision (h) of
34 Section 1170 for that conviction, is granted a pardon by the
35 Governor for the reason that the crime with which he or she was
36 charged was either not committed at all or, if committed, was not
37 committed by him or her, or who, being innocent of the crime with
38 which he or she was charged for either of the foregoing reasons,
39 shall have served the term or any part thereof for which he or she
40 was imprisoned in state prison or incarcerated in county jail, may,

under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation and Government Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment or incarceration.

SEC. 5. Section 4901 of the Penal Code is amended to read:

4901. (a) A claim under Section 4900, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, is required to be presented by the claimant to the California Victim Compensation and Government Claims Board within a period of two years after judgment of acquittal ~~or discharge given~~, or after pardon granted, or after release from custody, and no claim not so presented shall be considered by the California Victim Compensation and Government Claims Board.

(b) For purposes of subdivision (a), “release from custody” means release from imprisonment from state prison or from incarceration in county jail when there is no subsequent parole jurisdiction exercised by the Department of Correction and Rehabilitation or postrelease jurisdiction under a community corrections program, or when there is a parole period or postrelease period subject to jurisdiction of a community corrections program, when that period ends.

(c) A person may not file a claim under Section 4900 until 60 days have passed since the date of reversal of conviction or granting of the writ, or while the case is pending upon an initial refiling, or until a complaint or information has been dismissed a single time.

SEC. 6. Section 4902 of the Penal Code is amended to read:

4902. (a) If the provisions of Section 861.865 or 1485.55 apply in any claim, the California Victim Compensation and Government Claims Board shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant pursuant to Section 4904 and recommend to the Legislature payment of that sum. As to any claim to which Section 861.865 or 1485.55 does not apply, ~~the board shall order the Attorney General to~~ *shall* respond to the claim within 60 days ~~of the date of the order, or to request an extension of time, upon a showing of good cause, to file a response. Upon~~ *cause.*

(b) *Upon* receipt of a response from the Attorney General, the board shall fix a time and place for the hearing of the claim, and

1 shall mail notice thereof to the claimant and to the Attorney
2 General at least 15 days prior to the time fixed for the hearing. The
3 board shall use reasonable diligence in setting the date for the
4 hearing and shall attempt to set the date for the hearing at the
5 earliest date convenient for the parties and the board.

6 *(c) If the time period for response elapses without a request for*
7 *extension or a response from the Attorney General pursuant to*
8 *subdivision (a), the board shall fix a time and place for the hearing*
9 *of the claim, mail notice thereof to the claimant at least 15 days*
10 *prior to the time fixed for the hearing, and make a recommendation*
11 *based on the claimant's verified claim and any evidence presented*
12 *by him or her.*

13 SEC. 7. Section 4903 of the Penal Code is amended to read:

14 4903. (a) At the hearing the claimant shall introduce evidence
15 in support of the claim, and the Attorney General may introduce
16 evidence in opposition thereto. The claimant shall prove the facts
17 set forth in the statement constituting the claim, including the fact
18 that the crime with which he or she was charged was either not
19 committed at all, or, if committed, was not committed by him or
20 her, and the pecuniary injury sustained by him or her through his
21 or her erroneous conviction and imprisonment.

22 (b) ~~The~~ *In a hearing before the board, the factual findings and*
23 *credibility determinations underlying the establishing the court's*
24 *basis for granting of a writ of habeas corpus, a motion for new*
25 *trial pursuant to Section 1473.6, or an application for a certificate*
26 *of factual innocence as described in Section 1485.5 shall be binding*
27 *on the Attorney General, the factfinder, and the board.*

28 (c) The board shall deny payment of any claim ~~where if~~ the
29 board finds by a preponderance of the evidence that a claimant
30 ~~willfully plead~~ *pled guilty with the specific intent to protect the*
31 *another from prosecution of another* for the underlying conviction
32 for which the claimant is seeking compensation.

33 SEC. 8. Section 4904 of the Penal Code is amended to read:

34 4904. If the evidence shows that the crime with which the
35 claimant was charged was either not committed at all, or, if
36 committed, was not committed by the claimant, ~~and that the~~
37 ~~claimant did not, by any act or omission, intentionally contribute~~
38 ~~to the bringing about of his or her arrest or conviction for the crime~~
39 ~~with which he or she was charged,~~ and that the claimant has
40 sustained pecuniary injury through his or her erroneous conviction

1 and imprisonment, the California Victim Compensation and
2 Government Claims Board shall report the facts of the case and
3 its conclusions to the next Legislature, with a recommendation
4 that an appropriation be made by the Legislature for the purpose
5 of indemnifying the claimant for the pecuniary injury. The amount
6 of the appropriation recommended shall be a sum equivalent to
7 one hundred dollars (\$100) per day of incarceration served
8 subsequent to the claimant's conviction and that appropriation
9 shall not be treated as gross income to the recipient under the
10 Revenue and Taxation Code.

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